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CONSTITUTIONAL ASPECTS OF THE CONFLICT OF LAWS: RECENT DEVELOPMENTS*

By JOSEPH O'MEARA, JR.**

In diversity-of-citizenship cases *Erie v. Tompkins*¹ has been extended to the field of conflict of laws by *Klaxon Co. v. Stentor Electric Mfg. Co.*² This "prohibition . . . against . . . independent determination by the federal courts" of choice-of-law problems³ is in line with an earlier pronouncement, in *Kryger v. Wilson*⁴ in 1916, that "a mistaken application of doctrines of the conflict of laws . . . being purely a question of local common law, is a matter with which [the United States Supreme Court] is not concerned,"⁵ and with the repeated declaration that "the Constitution . . . does not guarantee that the decisions of state courts shall be free from error."⁶

*This paper was prepared for presentation before the Association of Life Insurance Counsel. Questions which may arise when a judgment of one state is sued on in another are not considered.

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¹(1938) 304 U. S. 64, 58 S. Ct. 817, 82 L. Ed. 1188, 114 A. L. R. 1487. In *Ruhlin v. New York Life Ins. Co.*, (1938) 304 U. S. 202, 58 S. Ct. 860, 82 L. Ed. 1290, the rule of the *Erie* case was held applicable to actions on insurance policies. Similarly in *Cities Service Oil Co. v. Dunlap*, (1939) 308 U. S. 208, 60 S. Ct. 201, 84 L. Ed. 196, and *Palmer v. Hoffman*, (U.S. 1943) 63 S. Ct. 477, it was held that the question of the burden of proof is a question of local substantive law which federal courts in diversity-of-citizenship cases must apply. See Note (1940) 128 A. L. R. 405 (presumptions, burden of proof and sufficiency of evidence). As to the application of the *Erie* case in respect to the parol evidence rule see Note (1942) 141 A. L. R. 1043. And, generally, see Broh-Kahn, *Uniformity Run Riot—Extensions of the Erie Case*, (1943) 31 Ky. L. J. 99.

Whether the rule of the *Erie* case applies in equity remains undecided. See Jackson, J., concurring in *D'Oench, Duhme & Co. v. Federal Deposit Ins. Corp.*, (1942) 315 U. S. 447, 467, n. 3, 62 S. Ct. 676, 86 L. Ed. 956: "[The] effect [of *Erie v. Tompkins*] even in [diversity] cases seems not to have been definitely settled. In an equity case it was said that 'the doctrine applies though the question of construction arises not in an action at law, but in a suit in equity.' *Ruhlin v. New York Life Ins. Co.*, (1938) 304 U. S. 202, 205, 58 S. Ct. 860, 82 L. Ed. 1290. That case was in the federal courts by reason of diversity jurisdiction. In a later case in which a suit in equity was brought in federal court to enforce liability under a federal statute the Court said: 'The Rules of Decision Act does not apply to suits in equity. . . . In the circumstances we have no occasion to consider the extent to which the federal courts, in the exercise of the authority conferred upon them by Congress to administer equitable remedies, are bound to follow state statutes and decisions affecting those remedies.' *Russell v. Todd*, 309 U. S. 280, 287, 294." Subsequently the Third Circuit Court of Appeals held that federal courts have authority to grant equitable remedies in accordance with their own rules regardless of state practice. *Black &*

In another line of cases,⁷ beginning before *Kryger v. Wilson* and extending to *John Hancock Mutual Life Ins. Co. v. Yates*⁸ in 1936, the Supreme Court set aside on constitutional grounds what it regarded as an erroneous choice of law by state courts.⁹

Yates v. Mahogany Assn., (C.C.A. 3d Cir. 1942) 129 F. (2d) 227, cert. den. (U.S. 1942) 63 S. Ct. 76. See Cook, *The Federal Courts and the Conflict of Laws*, (1942) 36 Ill. L. Rev. 493, 521-2.

Under the doctrine of the *Erie* case it is the duty of the federal courts to ascertain what the state law is from all available data; the decisions of intermediate state courts must be followed in the absence of convincing evidence that the highest court of the state would decide differently. *West v. American Telephone and Telegraph Co.*, (1940) 311 U. S. 223, 61 S. Ct. 179, 85 L. Ed. 139; *Stoner v. New York Life Ins. Co.*, (1940) 311 U. S. 464, 61 S. Ct. 336, 85 L. Ed. 284. But where the lower federal courts are applying local law the Supreme Court will not set aside their ruling except on a plain showing of error. *Palmer v. Hoffman*, (U.S. 1943) 63 S. Ct. 477.

In the interpretation and application of federal statutes, federal not local law applies; the doctrine of the *Erie* case is inapplicable. *Prudence Realization Corp. v. Geist*, (1942) 316 U. S. 89, 62 S. Ct. 978, 86 L. Ed. 1293; *Sola Electric Co. v. Jefferson Electric Co.*, (U.S. 1942) 63 S. Ct. 172; *Garrett v. Moore-McCormack Co.*, (U.S. 1942) 63 S. Ct. 246; *Wragg v. Federal Land Bank of New Orleans*, (U.S. 1943) 63 S. Ct. 273. See Note (1942) 140 A. L. R. 717.

⁷(1941) 313 U. S. 487, 61 S. Ct. 1020, 85 L. Ed. 1477. See Notes (1936) 100 A. L. R. 950; (1941) 132 A. L. R. 470; (1941) 134 A. L. R. 1468. In *D'Oench, Duhme & Co. v. Federal Deposit Ins. Corp.*, (1942) 315 U. S. 447, 456, 62 S. Ct. 676, 86 L. Ed. 956, reh. den. 315 U. S. 830, 62 S. Ct. 910, 86 L. Ed. 1224, the question was expressly reserved "whether the rule of the *Klaxon* case applies where federal jurisdiction is not based on diversity of citizenship."

⁸*Klaxon Co. v. Stentor Electric Mfg. Co.*, 313 U. S. 487, 496, 61 S. Ct. 1020, 85 L. Ed. 1477. See Cook, *The Federal Courts and the Conflict of Laws*, (1942) 36 Ill. L. Rev. 493. Prof. Cook argues that the federal courts should be permitted to determine which state law applies to transactions factually connected with more than one state.

⁹(1916) 242 U. S. 171, 176, 37 S. Ct. 34, 61 L. Ed. 229.

¹⁰*Cf. Fauntleroy v. Lum*, (1908) 210 U. S. 230, 28 S. Ct. 641, 52 L. Ed. 1039; *Williams v. North Carolina*, (U.S. 1942) 63 S. Ct. 207.

¹¹*Worcester County Trust Co. v. Riley*, (1937) 302 U. S. 292, 299, 58 S. Ct. 185, 82 L. Ed. 268; *Texas v. Florida*, (1939) 306 U. S. 398, 410, 59 S. Ct. 563, 83 L. Ed. 817.

¹²See Notes (1931) 74 A. L. R. 710; (1933) 82 A. L. R. 709; (1934) 92 A. L. R. 932; (1936) 100 A. L. R. 1143; (1941) 134 A. L. R. 1472.

¹³(1936) 299 U. S. 178, 57 S. Ct. 129, 81 A. L. R. 106.

¹⁴See Carnahan, *Conflict of Laws and Life Insurance Contracts*, (1942) 39-84; Cook, *The Powers of Congress under the Full Faith and Credit Clause*, (1919) 28 Yale L. J. 421; Dodd, *The Power of the Supreme Court to Review State Decisions in the Field of Conflict of Laws*, (1926) 39 Harv. L. Rev. 533; Langmaid, *The Full Faith and Credit Required for Public Acts*, (1929) 24 Ill. L. Rev. 383; Ross, *Has the Conflict of Laws Become a Branch of Constitutional Law?* (1931) 15 MINNESOTA LAW REVIEW 161; Corwin, *The "Full Faith and Credit" Clause*, (1933) 81 U. of Pa. L. Rev. 371; Ross, *"Full Faith and Credit" in a Federal System*, (1936) 20 MINNESOTA LAW REVIEW 140; Hilpert and Cooley, *The Federal Constitution and the Choice of Law*, (1939) 25 Wash. U. L. Quar. 27; Smith, *The Constitution and the Conflict of Laws*, (1939) 27 Georgetown L. J. 536.

In some it rested decision on the Fourteenth Amendment;¹⁰ in some on the full faith and credit clause;¹¹ in others the precise ground is uncertain.¹²

The leading case holding the forum's choice of law violative of the Fourteenth Amendment is *Home Ins. Co. v. Dick*,¹³ decided in 1930. In that case the Court held the application of the statute of limitations of the forum (Texas, where Dick resided) as against a shorter period fixed by the contract in suit, which was made and to be performed in Mexico to whose laws it "was expressly made subject," was a denial of due process. The Court said:

"It [i.e., the Texas statute] may not validly affect contracts which are neither made nor are to be performed in Texas."¹⁴

The *Dick* case was followed in 1934 in *Hartford Accident & Indemnity Co. v. Delta & Pine Land Co.*¹⁵ As in the *Dick* case the court of the forum (Mississippi, plaintiff's domicile) followed the Mississippi statute of limitations instead of a shorter contractual period incorporated in the fidelity bond sought to be recovered on, which had been executed and delivered in Tennessee. The decision extended the *Dick* case inasmuch as the defendant was authorized to do and was doing business in Mississippi, the bond covered defalcations there as well as elsewhere and the misappropriation actually occurred in Mississippi, whereas in the *Dick* case nothing whatever was done or to be done in Texas. At the same time the holding restricted the *Dick* case by suggesting that the propriety of the forum's choice of its own rule depends on the relative importance of its interest in the matter,¹⁶ whereas the *Dick* case was absolute in its condemnation of the forum's refusal to give effect to the engagement of the parties.

The latest and perhaps the leading case holding the forum's

¹⁰*New York Life Ins. Co. v. Dodge*, (1918) 246 U. S. 357, 38 S. Ct. 337, 62 L. Ed. 772; *Home Ins. Co. v. Dick*, (1930) 281 U. S. 397, 50 S. Ct. 338, 74 L. Ed. 926; *Hartford Accident & Indemnity Co. v. Delta & Pine Land Co.*, (1934) 292 U. S. 143, 54 S. Ct. 634, 78 L. Ed. 1178, reh. den. 292 U. S. 607, 54 S. Ct. 772, 78 L. Ed. 1468.

¹¹*Bradford Electric Light Co. v. Clapper*, (1932) 286 U. S. 145, 52 S. Ct. 571, 76 L. Ed. 1026; *John Hancock Mut. Life Ins. Co. v. Yates*, (1936) 299 U. S. 178, 57 S. Ct. 129, 81 L. Ed. 106; cf. *Broderick v. Rosner*, (1935) 294 U. S. 629, 55 S. Ct. 589, 79 L. Ed. 1100.

¹²*New York Life Ins. Co. v. Head*, (1914) 234 U. S. 149, 34 S. Ct. 879, 58 L. Ed. 1259; *Aetna Life Ins. Co. v. Dunken*, (1924) 266 U. S. 389, 45 S. Ct. 129, 60 L. Ed. 342.

¹³(1930) 281 U. S. 397, 50 S. Ct. 338, 74 L. Ed. 926.

¹⁴*Id.* at 410.

¹⁵(1934) 292 U. S. 143, 54 S. Ct. 634, 78 L. Ed. 1178.

¹⁶*Id.* at 150.

choice of law violative of the full faith and credit clause¹⁷ is *John Hancock Mutual Life Ins. Co. v. Yates*,¹⁸ decided in 1936, in which the Supreme Court of Georgia was reversed for refusing to give effect to a statute of New York where the policy in suit was applied for, issued and delivered and where the insured resided.¹⁹ The Court said:

"The company sets up as a defense a substantive right conferred by a statute of New York. . . . In respect to the accrual of the right asserted under the contract, or liability denied, there was no occurrence, nothing done, to which the law of Georgia could apply. Compare *Home Insurance Co. v. Dick*, 281 U. S. 397, 408. To sustain the defense involves merely recognition by the courts of Georgia that the parties have by their contract made in New York subjected themselves to certain conditions prescribed by its statute. . . . As construed by the highest court of the State, the statute . . . enacts a rule of substantive law which became a term of the contract . . . as fully as if a provision to that effect had been embodied in writing in the policy. To refuse to give that defense effect would irremediably subject the Company to liability."²⁰

Even before the *Yates* case, however, a new attitude began to be reflected in the Court's decisions, first clearly evidenced by *Alaska Packers Assn. v. Industrial Accident Comm.*²¹ in 1935. That case upheld an award made in California under its workmen's compensation act to a non-resident alien injured in the course of his duties under a contract of employment executed in California, notwithstanding the contract stipulated that the parties should be subject to and bound by the compensation law of Alaska where the injuries occurred.

In *Pacific Employers Ins. Co. v. Industrial Accident Comm.*,²² which followed in 1939, the Court refused to disturb an award made in California under California law in favor of a non-resident injured while working temporarily in California under a contract of employment made in Massachusetts where he resided and was

¹⁷U. S. Const. Art. IV, Sec. 1.

¹⁸(1936) 299 U. S. 178, 57 S. Ct. 129, 81 L. Ed. 106.

¹⁹That a statute is a "public act" within the compass of the full faith and credit clause was first squarely held in *Bradford Electric Light Co. v. Clapper*, (1932) 286 U. S. 145, 52 S. Ct. 571, 76 L. Ed. 1026. See Carnahan, *Conflict of Laws and Life Insurance Contracts*, (1942) 44-50.

²⁰299 U. S. 178, 182-183, 57 S. Ct. 129, 81 L. Ed. 106. Accord: *Bradford Electric Light Co. v. Clapper*, (1932) 286 U. S. 145, 160, 52 S. Ct. 571, 76 L. Ed. 1026.

²¹(1935) 294 U. S. 532, 55 S. Ct. 518, 79 L. Ed. 1044. Cf. *Hartford Accident & Indemnity Co. v. Delta & Pine Land Co.*, (1934) 292 U. S. 143, 150, 54 S. Ct. 634, 78 L. Ed. 1178.

²²(1939) 306 U. S. 493, 59 S. Ct. 629, 83 L. Ed. 940.

regularly employed and by whose compensation act he had consented to be bound.

In these cases the Supreme Court held that neither the Fourteenth Amendment nor the full faith and credit clause prevented California from applying its own statute rather than that of another jurisdiction. They mark a clear departure from the attitude exemplified by the *Dick* and *Yates* cases.

The most extreme expression of the Court's present outlook and approach is found in *Griffin v. McCoach*,²³ decided in 1941. One Gordon persuaded a group of New Yorkers to finance certain business ventures he was promoting in Texas where he resided. To secure their advances Gordon's backers procured a policy of insurance on his life; they were the beneficiaries and paid the premiums. The policy was applied for and delivered in New York, payable in New Jersey.²⁴ Subsequently, by mutual agreement, Gordon relinquished certain rights and powers vested in him by the provisions of the policy, in consideration of the payment to him of a percentage of any disability benefits and of the payment to his wife of a like proportion of the proceeds at his death. The papers effectuating this agreement were executed by Gordon in Texas, forwarded to and executed by the creditor-beneficiaries in New York and sent from there to the insurer in New Jersey. Later three of the creditor-beneficiaries severally assigned their interest in the policy. Each of these assignments was executed and delivered in New York by and to a resident of that state, and the assignees thereafter paid a proportionate part of the premiums. At Gordon's death his administrator sued the insurer in the federal district court in Texas to recover for the estate so much of the policy proceeds as was covered by these transfers on the ground that, though valid in New York, the assignments were invalid in Texas because the assignees did not have an insurable interest in Gordon's life. The insurer interpleaded the New York assignees, for whom judgment was entered. The Circuit Court of Appeals affirmed on the ground that "to apply the laws of Texas to the New York contracts would constitute an unwarranted extraterritorial control of contracts and regulation of business outside of Texas in disregard

²³(1941) 313 U. S. 498, 61 S. Ct. 1023, 85 L. Ed. 1481, 134 A. L. R. 1462. Accord: *Order of United Commercial Travelers v. Meinsen*, (C.C.A. 8th Cir. 1942) 131 F. (2d) 176.

²⁴The fact that the policy was payable in New Jersey has been verified by the insurer.

of the laws of New York."²⁵ The Supreme Court reversed on the ground that the court below should have applied Texas law, saying:

"Rights acquired by contract outside a state are enforced within a state, certainly where its own citizens are concerned; but that principle excepts claimed rights so contrary to the law of the forum as to subvert the forum's view of public policy. . . . It is for the state to say whether a contract contrary to [its] statute or rule of law is so offensive to its view of public welfare as to require its courts to close their doors to its enforcement."²⁶

Of the cases beginning with *New York Life Ins. Co. v. Head*²⁷ in 1914 which upset state court solutions of conflicts problems on constitutional grounds, the *Head* case and *Aetna Life Ins. Co. v. Dunken*²⁸ were disposed of on the ground that the effect of the forum's public policy was not discussed or appraised;²⁹ *New York Life Ins. Co. v. Dodge*³⁰ and *John Hancock Mutual Life Ins. Co. v. Yates*³¹ were distinguished on the facts;³² *Bradford Electric Light Co. v. Clapper*³³ and *Hartford Accident & Indemnity Co. v. Delta & Pine Land Co.*³⁴ were cited for the assertion that "where this Court has required the state of the forum to apply . . . foreign law under the full faith and credit clause or under the Fourteenth Amendment, it has recognized that a state is not required to enforce a law obnoxious to its public policy."³⁵ Speaking of the *Dick* case the Court said that the "rule" expressed in the passage just quoted "was not applied where the parties to [a] contract acquired rights beyond the state's borders with no relation to any-

²⁵(C.C.A. 5th Cir. 1941) 116 F. (2d) 261, 264. Accord: *Aetna Life Ins. Co. v. Dunken*, (1924) 266 U. S. 389, 399, 45 S. Ct. 129, 60 L. Ed. 342. ("The Texas statute was incapable of being constitutionally applied . . . since the effect of such application would be to regulate business outside the state of Texas and control contracts made by citizens of other states, in disregard of their laws. . . .")

²⁶313 U. S. 498, 506-7, 61 S. Ct. 1023, 85 L. Ed. 1481. Cf. *United States v. Pink*, (1942) 315 U. S. 203, 62 S. Ct. 552, 86 L. Ed. 796. (The rule of the *Griffin* case "must give way before the superior Federal policy evidenced by a treaty or international compact or agreement.")

²⁷(1914) 234 U. S. 149, 34 S. Ct. 879, 58 L. Ed. 1259.

²⁸(1924) 266 U. S. 389, 45 S. Ct. 129, 60 L. Ed. 342.

²⁹(1941) 313 U. S. 498, 505-6, 61 S. Ct. 1023, 85 L. Ed. 1481.

³⁰(1918) 246 U. S. 357, 38 S. Ct. 337, 62 L. Ed. 772.

³¹(1936) 299 U. S. 178, 57 S. Ct. 129, 81 L. Ed. 106.

³²The former in the *Griffin* case, (1941) 313 U. S. 498, 507, 61 S. Ct. 1023, 85 L. Ed. 1481; the latter in *Klaxon Co. v. Stentor Electric Mfg. Co.*, (1941) 313 U. S. 487, 497-8, 61 S. Ct. 1020, 85 L. Ed. 1477. The *Dodge* case in effect was overruled by *Mutual Life Ins. Co. v. Liebing*, (1922) 259 U. S. 209, 42 S. Ct. 467, 66 L. Ed. 900.

³³(1932) 286 U. S. 145, 52 S. Ct. 571, 76 L. Ed. 1026.

³⁴(1934) 292 U. S. 143, 54 S. Ct. 634, 78 L. Ed. 1178, reh. den. 292 U. S. 607, 54 S. Ct. 772, 78 L. Ed. 1468.

³⁵(1941) 313 U. S. 498, 507, 61 S. Ct. 1023, 85 L. Ed. 1481.

thing done or to be done within the borders.”³⁶ None of these cases was expressly disapproved.

Professor Carnahan has expressed the view that “the decision in the *Griffin* case is not inconsistent with that in the *Dick* case” because, the insurer having interpleaded and thus admitted liability, “its obligation was in no respect increased by imposition of the forum’s conflict of laws rule,” whereas in the *Dick* case “application of the state rule created and imposed a liability where none existed under the law properly applicable.”³⁷ There are, of course, differences between the two cases—any case can be distinguished from every other case on some ground; but the facts in the *Griffin* case and the defense based thereon so closely parallel the facts and the defense in the *Dick* case that the divergent results are impossible to reconcile.

In the *Dick* case the controversy was between a resident plaintiff and two New York reinsurers who had been brought involuntarily into a Texas court by writs of garnishment; in the *Griffin* case the controversy was between a resident plaintiff and a number of New York assignees who were interpleaded by the insurer and thus likewise compelled to litigate in a forum not of their own choosing. In each case the non-resident defendants relied on a contract made and to be performed outside of Texas and valid where made. In both cases the contract relied on by the out-of-state parties was obnoxious to the public policy of Texas, expressed in a statute in the *Dick* case, in judicial decisions in the *Griffin* case.

In the *Dick* case the Court met the argument predicated on the public policy of Texas with this absolute and unqualified declaration:

“We need not consider how far the State may go in imposing restrictions on the conduct of its own residents, and of foreign corporations which have received permission to do business within

³⁶Id. Subsequently in *Hoopeston Canning Co. v. Pink*, (U.S. 1943) 63 S. Ct. 602, 605, n. 3, Mr. Justice Black stated that the “rule [of the *Griffin* case, (1941) 313 U. S. 498, 61 S. Ct. 1023, 85 L. Ed. 1481, 134 A. L. R. 1462] was not applied where the state had no actual contact with the insurance contract; i.e., where neither the original insured nor the company were residents of the state, the property insured was elsewhere, and the contract was made elsewhere. *Home Insurance Co. v. Dick*, (1930) 281 U. S. 397, 50 S. Ct. 338, 74 L. Ed. 926, 74 A. L. R. 701.” The plaintiff in the *Dick* case was assignee of the original insured, who was an alien. In that situation the fact that the plaintiff, *Dick*, was a citizen and resident of the forum state was held to be “without significance.”

³⁷See Carnahan, *Conflict of Laws and Life Insurance Contracts*, (1942) 76-77.

its borders; or how far it may go in refusing to lend the aid of its courts to the enforcement of rights acquired outside its borders. *It may not abrogate the rights of parties acquired outside its borders having no relation to anything done or to be done within them.*"³⁸

In the *Griffin* case the Court said just as unequivocally:

"Rights acquired by contract outside a state are enforced within a state, certainly where its own citizens are concerned; but that principle *excepts claimed rights so contrary to the law of the forum as to subvert the forum's view of public policy.*"³⁹

It is true the opinion in the *Griffin* case speaks of the constitutional power of Texas courts "to close their doors to [the] enforcement" of claims recognized elsewhere,⁴⁰ which is suggestive of the basic doctrine of the *Dick* and *Yates* cases that "to a defense different considerations apply,"⁴¹ best stated in *Bradford Electric Light Co. v. Clapper*⁴² as follows:

"A state may, on occasion, decline to enforce a foreign cause of action.⁴³ In so doing, it merely denies a remedy, leaving unimpaired the plaintiff's substantive right, so that he is free to enforce it elsewhere. But to refuse to give effect to a substantive defense under the applicable law of another state . . . subjects the defendant to irremediable liability. This may not be done."⁴⁴

But if that doctrine had been adhered to, the decision in the *Griffin* case must have gone the other way. For there was no question in the *Griffin* case, any more than in the *Dick* case, of merely refusing to entertain a cause of action. Equally in both cases what was involved was the validity of a contract made and to be performed elsewhere, which was relied on by out-of-state defendants who were before the court solely by virtue of compulsory process. What the Supreme Court sanctioned and the Circuit Court of Appeals did on remand in the *Griffin* case was to invalidate the out-of-state contracts relied on by the out-of-state

³⁸(1930) 281 U. S. 397, 410, 50 S. Ct. 388, 74 L. Ed. 926. Italics added.

³⁹(1941) 313 U. S. 498, 506, 61 S. Ct. 1023, 85 L. Ed. 1481. Italics added.

⁴⁰*Id.* at 507.

⁴¹But cf. *Alaska Packers Assn. v. Industrial Accident Comm.*, (1935) 294 U. S. 532, 547, 55 S. Ct. 518, 79 L. Ed. 1044.

⁴²(1932) 286 U. S. 145, 160, 52 S. Ct. 571, 76 L. Ed. 1026.

⁴³Accord: *Restatement, Conflict of Laws* (1934) Sec. 612; and see *Jackson, J.*, concurring in *Miles v. Illinois Central Ry.*, (U.S. 1942) 62 S. Ct. 827, 832. But cf. *Broderick v. Rosner*, (1935) 294 U. S. 629, 55 S. Ct. 589, 79 L. Ed. 1100.

⁴⁴See *Ross*, "Full Faith and Credit" in a Federal System, (1936) 20 MINNESOTA LAW REVIEW 140, 175-6; *Nussbaum*, Public Policy and the Political Crisis in the Conflict of Laws, (1940) 49 Yale L. J. 1027, 1033-7.

defendants, for repugnance to the public policy of Texas.⁴⁵ That is precisely what is characterized in the *Dick* case as a deprivation of property without due process of law.

To be sure, there is a formal distinction between the two cases in that a contrary decision in the *Dick* case would have imposed a liability beyond that contracted for. But the net effect of the *Griffin* case is indistinguishable from what would have been the result in the *Dick* case had it gone the other way, namely, abrogation of rights claimed under a contract made and to be performed elsewhere and there valid. In short, what the non-resident defendants had bargained for was taken from them in the *Griffin* case, whereas the same result in the *Dick* case was held forbidden by the Fourteenth Amendment. Plainly, therefore, the considerations deemed relevant and conclusive in the *Dick* case were not so regarded in the *Griffin* case; the drift and emphasis of the latter cannot be squared with the former.

It is possible to argue, of course, that a state's interest in the lives of its residents which is sought to be protected by confining the benefits of insurance to those having an insurable interest, has a greater claim to recognition than its concern with the problems regulated by a statute of limitations. But neither case was decided on any such basis.⁴⁶ On the contrary the insistence in the *Dick* case was on the inviolability of rights vested under a contract made and to be performed elsewhere. In the *Griffin* case, on the other hand, the emphasis is on the supremacy of the forum's conception of public policy—"the principle [that rights acquired by contract outside a state are enforced within it] excepts claimed rights so contrary to the law of the forum as to subvert the forum's view of public policy."⁴⁷

Substantially that position was urged upon the Court in the *Dick* case, to no purpose. Its avowal in the *Griffin* case, if taken

⁴⁵(C.C.A. 5th Cir. 1941) 123 F. (2d) 550, cert. den. (1942) 316 U. S. 683, 62 S. Ct. 1270, 86 L. Ed. 1755 ("Even if the assignees are claiming under foreign contracts which are not governed by the law of Texas, nevertheless we think the administrator is entitled to recover, because . . . it is against the public policy of the State of Texas to allow anyone who has no insurable interest to be the owner of a policy of insurance upon the life of a human being.")

⁴⁶Relying on the *Griffin* case the Eighth Circuit Court of Appeals in *Order of United Commercial Travelers v. Meinsen*, (C.C.A. 8th Cir. 1942) 131 F. (2d) 176, applied the statute of limitations of the forum, Missouri, as against a shorter contractual period in the certificate in suit which was issued in Ohio where the contractual limitation was valid, on the ground that it violated Missouri's public policy. Neither the *Dick* case nor *Hartford Accident & Indemnity Co. v. Delta & Pine Land Co.* was mentioned.

⁴⁷(1941) 313 U. S. 498, 506, 61 S. Ct. 1023, 85 L. Ed. 1481. Italics added.

at face value, makes the state court the final arbiter of the public policy of the forum⁴⁸ and allows its policy, as so determined, full and unrestricted play.

But it is evident that the language in question cannot be accepted wholly without qualification or reservation. In the later case of *Pink v. A. A. A. Highway Express*⁴⁹ the Court explicitly reserved for decision when they arise questions resulting from a conflict of interest between the forum and another jurisdiction,⁵⁰ and appears, moreover, to have placed specific limitation on the broad generalization of the *Griffin* case.

In the *Pink* case the Court reaffirmed the "familiar rule that those who become stockholders in a corporation subject themselves to liability for assessment . . . in conformity to the statutes of the state of its organization,"⁵¹ declaring categorically that "a necessary consequence of becoming a stockholder is the assumption of those obligations which, by the laws governing the organization and management of the corporation, attach to stock ownership."⁵² That substantially confirms the view expressed in *Broderick v. Rosner*⁵³ in 1935 that liability for "assessment is an incident of . . . incorporation [and] thus . . . peculiarly within the regulatory power of . . . the state of incorporation. 'So much so . . . that no other State properly can be said to have any public policy thereon.'" The Court held, however, that, although the obligations of members of a mutual insurance company are determined by the "laws"⁵⁴ of the state of organization, the question

⁴⁸See *New York Life Ins. Co. v. Cravens*, (1900) 178 U. S. 389, 398, 20 S. Ct. 962, 44 L. Ed. 1116 ("... the interests of the State must be deemed to be expressed in its laws. The public policy of the State must be deemed to be authoritatively declared by its courts"); *Bond v. Hume*, (1917) 243 U. S. 15, 22, 37 S. Ct. 366, 61 L. Ed. 365 ("... it is peculiarly within the province of the law-making power to define the public policy of [a] state"); *Clark v. Williard*, (1935) 294 U. S. 211, 212, 55 S. Ct. 356, 79 L. Ed. 865 ("As to that question [i.e., whether there was any local policy, expressed in statute or decision] the Supreme Court of [the forum] would speak the final word"); *Griffin v. McCoach*, (C.C.A. 5th Cir. 1941, on remand) 123 F. (2d) 550, 551, cert. den. (1942) 316 U. S. 683, 62 S. Ct. 1270, 86 L. Ed. 1755 ("The public policy of Texas, as announced by its highest court, is binding upon us. . . . The public policy of [a] state does not depend exclusively upon legislation, but may be the result of judicial construction and announcement"); *Order of United Commercial Travelers v. Meinsen*, (C.C.A. 8th Cir. 1942) 131 F. (2d) 176 ("By the public policy of a state is meant 'the law of the State, whether found in the constitution, the statutes or judicial records'").

⁴⁹(1941) 314 U. S. 201, 62 S. Ct. 241, 86 L. Ed. 152, reh. den. 314 U. S. 716, 62 S. Ct. 477, 86 L. Ed. 570.

⁵⁰Id. at 247.

⁵¹Id. at 245. Accord: *Restatement, Conflict of Laws* (1934) Sec. 185.

⁵²(1941) 314 U. S. 201, 208, 62 S. Ct. 241, 86 L. Ed. 152.

⁵³(1935) 294 U. S. 629, 643, 55 S. Ct. 589, 79 L. Ed. 1100.

⁵⁴(1941) 314 U. S. 201, 208, 62 S. Ct. 241, 86 L. Ed. 152.

whether a particular policyholder is or is not a member may properly be decided by the forum according to its own "laws and policy"⁵⁵ without offending the full faith and credit clause.⁵⁶

No relevant distinction can be drawn between claims against corporate shareholders or members arising out of that relation and claims by them in virtue of their status as shareholders or members, the latter being equally an incident of incorporation. Hence the same standard which defines the duties must likewise prescribe the rights attaching to corporate membership, namely, the law of the chartering state. So it was held in *Supreme Council of Royal Arcanum v. Green*⁵⁷ in 1915 and *Modern Woodmen v. Mixer*⁵⁸ in 1925, both of which were cited with approval in the *Pink* case.⁵⁹ Thus in the *Green* case the Court looked "to the laws [of the chartering state] to determine the powers of the corporation and the rights and duties of its members."⁶⁰ Plainly, then, the *Pink* case recognizes that, notwithstanding the *Klaxon* and *Griffin* cases, all questions growing out of the corporate relationship must be determined by the "laws" of the state of incorporation.

In the *Green* and *Mixer* cases and in other similar cases (*Hartford Life Ins. Co. v. Ibs*,⁶¹ *Hartford Life Ins. Co. v. Barber*⁶² and *Sovereign Camp v. Bolin*⁶³) a member of a mutual insurance association asserted against it rights claimed to arise by reason of his membership; in each the association relied on a prior adjudication by the court of last resort of the state by which it had been chartered, in an action against it involving the same question; in none had the member therein seeking relief been a party to the former proceeding; in all the Court held the prior judgment conclusive of the present controversy. In the *Green*, *Ibs*, *Barber* and *Bolin* cases the prior judgment was obtained in a class suit; in the *Mixer* case, on the other hand, the previous judgment was secured in an action brought by another member solely in his own behalf. Taken together these cases hold that the legal relations flowing from membership, as such, in a mutual insurance company are settled and determined for all members and all jurisdictions to the extent that they are adjudicated by the courts of the

⁵⁵Id.

⁵⁶But cf. Restatement, Conflict of Laws (1934) Sec. 182.

⁵⁷(1915) 237 U. S. 531, 35 S. Ct. 724, 59 L. Ed. 1089.

⁵⁸(1925) 267 U. S. 544, 45 S. Ct. 389, 69 L. Ed. 783, 41 A. L. R. 1386.

⁵⁹(1941) 314 U. S. 201, 208, 62 S. Ct. 241, 86 L. Ed. 152.

⁶⁰(1915) 237 U. S. 531, 546, 35 S. Ct. 724, 59 L. Ed. 1089.

⁶¹(1915) 237 U. S. 662, 35 S. Ct. 692, 59 L. Ed. 1165.

⁶²(1917) 245 U. S. 146, 38 S. Ct. 54, 62 L. Ed. 208.

⁶³(1938) 305 U. S. 66, 59 S. Ct. 35, 83 L. Ed. 45, 119 A. L. R. 483.

chartering state in an action to which the company is a party.⁶⁴ And that holding evidently has not been disturbed by the *Klaxon* and *Griffin* cases inasmuch as the subsequent *Pink* case cited the *Green* and *Mixer* cases with approval.

More than that, however, was involved in the *Green*, *Mixer* and related cases;⁶⁵ they stand for a much more fundamental proposition, namely, that all questions of corporate relationship must be decided according to the law of the chartering state, whether statutory or otherwise.

The language of the opinions in these cases is ambiguous and perplexing and the decisions have been variously interpreted.⁶⁶ There is no question, however, that in each case a prior judgment was relied on by the corporate defendant and that in each the defense was upheld. It is wholly plain, moreover, that this result would not have followed had the previous judgment been rendered in a state other than the state of incorporation.⁶⁷ In each instance the judgment was held entitled to full faith and credit only because it was a judgment of the chartering state. This appears most clearly in the *Ibs* case and in the *Green* case which relied on the *Ibs* case and in turn was held controlling in the *Mixer* case.⁶⁸ Thus in the *Green* case the Court was at pains to emphasize: ". . . as the charter was a Massachusetts charter and the constitu-

⁶⁴These cases involved incorporated fraternal benefit associations doing business on the assessment plan. Prof. Carnahan contends that they should not be followed in the case of old-line mutual insurance companies. Carnahan, *Conflict of Laws and Life Insurance Contracts*, (1942) 152-3. But there is nothing in the *Pink* case suggestive of any such distinction. The insurer there involved was not a fraternal benefit association. It charged a stated premium but was vested by statute with a limited power of assessment. Similarly the fraternal now operate on a level premium basis but uniformly reserve power to augment their funds by means of assessment. Maclean, *Life Insurance*, (5th ed. 1939) 427-31; Knight, *Advanced Life Insurance*, (1926) C. XX. This distinctive feature of fraternal insurance, i.e., liability to assessment, is plainly irrelevant. For in the case of old-line mutual companies, no less than in the case of the fraternal, losses are payable only from a common fund resulting from members' contributions. Equally in both cases the integrity and mutuality of this common fund requires that it be administered according to a single standard. That standard is provided by the state of incorporation, whose law is the criterion for determining all questions arising out of any corporate relationship as such. This latter point, that is, the exclusive applicability of the law of the corporate domicile, is considered in succeeding paragraphs of the text.

⁶⁵I.e., *Hartford Life Ins. Co. v. Ibs*, (1915) 237 U. S. 662, 35 S. Ct. 692, 59 L. Ed. 1165; *Hartford Life Ins. Co. v. Barber*, (1917) 245 U. S. 146, 38 S. Ct. 54, 62 L. Ed. 208; *Sovereign Camp v. Bolin*, (1938) 305 U. S. 66, 59 S. Ct. 35, 83 L. Ed. 45.

⁶⁶See Carnahan, *Conflict of Laws and Life Insurance Contracts*, (1942) 47-50, 133-154.

⁶⁷This is recognized in *Eminent Household v. Bryant*, (1940) 62 Ga. App. 167, 8 S. E. (2d) 438.

⁶⁸(1925) 267 U. S. 544, 551, 45 S. Ct. 389, 69 L. Ed. 783.

tion and by-laws were a part thereof, adopted in Massachusetts, having no other sanction than the laws of that state, it follows . . . that those laws were integrally and necessarily the criterion to be resorted to for the purpose of ascertaining the significance of the constitution and by-laws . . . if the laws of Massachusetts were not applicable, the full faith and credit due to the judgment would require only its enforcement to the extent that it constituted the thing adjudged as between the parties to the record in the ordinary sense, and on the other hand, if the Massachusetts law applies, the full faith and credit due to the judgment additionally exacts that the right of the corporation to stand in judgment as to all members as to controversies concerning the power and duty to levy assessments must be recognized, the duty to give effect to the judgment in such cases being substantially the same as the duty to enforce the judgment."⁶⁹

Plainly, then, more was involved than merely giving full faith and credit to the judgment of a sister state.

In all but the *Mixer* case the Court held the present litigants, that is, the respondents, concluded by the previous judgment because of "the right of the corporation to stand in judgment as to all members." No statute of the chartering state was cited to support the authority of the corporation so to represent its absent members. On the contrary the Court referred only to general principles of corporation law assumed to prevail in the state of organization.⁷⁰ Hence the holding that the respondents were bound by the prior judgment, even though not parties to the record, required the courts of the forum in each instance to adopt a principle of adjudication having no basis in the statute law of the incorporating state.

The same is true of the *Mixer* case. Although in that case the principle of representation was inapplicable, the Court nevertheless enforced the prior judgment on the ground that "as marriage looks to domicile, membership looks to and must be governed by the law of the State granting incorporation."⁷¹ Again no statute of the chartering state was invoked.

In short, in these cases the Supreme Court required the courts of the forum to follow the non-statutory law of the corporation's domicile. The chief among them, the *Green* and *Mixer* cases, were cited and relied on in the *Pink* case. That case, moreover, itself declares that the "laws" of the state of incorporation must

⁶⁹(1915) 237 U. S. 531, 542, 545, 35 S. Ct. 724, 59 L. Ed. 1089.

⁷⁰*Id.* at 543-4, 545.

⁷¹(1925) 267 U. S. 544, 551, 45 S. Ct. 389, 69 L. Ed. 793. Accord: *Broderick v. Rosner*, (1935) 294 U. S. 629, 643-4, 55 S. Ct. 589, 79 L. Ed. 1100.

govern, without any qualification suggesting that statutes only were meant. And since then the Court has again held, in *Tax Comm. v. Aldrich*,^{71a} that the "law [of a corporation's domicile] defines the nature and extent of the interest of the shareholders." On the evidence to date, therefore, the conclusion is that, as regards all questions arising out of the corporate relationship, courts of the forum must decide as would the courts of the incorporating state, notwithstanding the *Klaxon* and *Griffin* cases.⁷²

The constitutional sanction for the enforcement in the *Green*, *Mixer* and related cases of the common law of the corporate domicile, was not identified. It cannot be the full faith and credit clause. That clause extends only to the public acts, records and judicial proceedings of a sister state.^{72a} To hold the common law a public act or record would require a plain distortion of the constitutional phrase, for which there is no precedent.⁷³ Moreover it would convert every choice-of-law case into a constitutional problem in the teeth of the *Kryger* case, recently restored to favor,⁷⁴ and of the *Klaxon* case holding that federal courts are bound to follow the conflict of laws rules of the states where they sit, in diversity actions at law. It can be supported, however, on the ground that refusal by the forum to follow the law of a corporation's domicile, whatever its origin may be, is an unreasonable projection of the forum's own law and so a denial of due process.⁷⁵

The *Pink* case thus demonstrates that the priority apparently granted to local public policy by the broad language of the *Griffin* case is not absolute and unlimited. Local policy has always been

^{71a}(1942) 316 U. S. 174, 62 S. Ct. 1008, 86 L. Ed. 1358.

⁷²Accord: *Rogers v. Guaranty Trust Co. of New York*, (1933) 288 U. S. 123, 53 S. Ct. 295, 77 L. Ed. 652, 89 A. L. R. 736; *Cohen v. American Window Glass Co.*, (C.C.A. 2d Cir. 1942) 126 F. (2d) 111; *Restatement, Conflict of Laws* (1934) Secs. 183-185, 187, 194 Comment a, 197, 199 Comment a, 200 Comment a.

^{72a}*Aetna Life Ins. Co. v. Tremblay*, (1912) 223 U. S. 185, 32 S. Ct. 309, 56 L. Ed. 398. See Act of May 26, 1790, Chap. 11, U. S. C., tit. 28, sec. 687, 28 U. S. C. A., sec. 687, 8 F. C. A., tit. 28, sec. 687 and cf. *Yarborough v. Yarborough*, (1933) 290 U. S. 202, 54 S. Ct. 181, 78 L. Ed. 269; *Williams v. North Carolina*, (U.S. 1942) 63 S. Ct. 207.

⁷³Cf. *John Hancock Mut. Life Ins. Co. v. Yates*, (1936) 299 U. S. 178, 57 S. Ct. 129, 81 L. Ed. 106; see Abel, *Administrative Determinations and Full Faith and Credit*, (1937) 22 Iowa L. Rev. 461.

⁷⁴*Kryger v. Wilson*, (1916) 242 U. S. 171, 37 S. Ct. 34, 61 L. Ed. 229, was cited and relied on in both *Klaxon Co. v. Stentor Electric Mfg. Co.*, (1941) 313 U. S. 487, 498, 61 S. Ct. 1020, 85 L. Ed. 1477, and *Pink v. A. A. Highway Express*, (1941) 314 U. S. 201, 209, 62 S. Ct. 241, 86 L. Ed. 152; likewise in *Alropa Corp. v. Kirschwehm*, (1941) 313 U. S. 549, 61 S. Ct. 1120, 85 L. Ed. 1514 and *Hoopston Canning Co. v. Pink*, (U.S. 1943) 63 S. Ct. 602, 605, n. 3.

⁷⁵The test of constitutional propriety of the forum's choice of its own rule is stated at page 515 of the text.

given more or less weight.⁷⁶ The significance of the *Klaxon* and *Griffin* cases lies not in the recognition of local policy but in the greatly increased deference accorded to it, and in the consequent abandonment of the doctrine that, while ordinarily the forum may refuse to entertain a foreign cause of action, it may not refuse to give effect to a substantive defense under the applicable law of another jurisdiction.⁷⁷ In short, the emphasis has shifted from protecting "vested rights" to respecting state autonomy.^{77a} The view formerly entertained is illustrated by the following dictum of Mr. Justice Brandeis:

"It is true that . . . the full faith and credit clause does not require the enforcement of every right which has ripened into a judgment of another state or has been conferred by its statutes. . . . *But the room left for the play of conflicting policies is a narrow one.* . . . For the states of the Union, the constitutional limitation imposed by the full faith and credit clause abolished, in large measure, the general principle of international law by which local policy is permitted to dominate rules of comity."⁷⁸

The contrast is obvious between that and the attitude expressed in the *Griffin* case which follows very closely the dissenting opinion of the present Chief Justice in *Yarborough v. Yarborough*:⁷⁹

" . . . it would not seem open to serious question that every state has an interest in securing the maintenance and support of minor children residing within its own territory so complete and so vital to the performance of its functions as a government, that no other state could set limits upon it. Of that interest South Carolina is the sole mistress within her own territory. . . . Even though we might appraise it more lightly than does South Carolina, it is not for us to say that a state is not free, within constitutional limitations, to regard that interest as fully as important and as completely within the realm of state power as the legal incidents of land located within its boundaries, or of a marriage relationship, wherever entered into but of which it is the domicile, or its power

⁷⁶*Bond v. Hume*, (1917) 243 U. S. 15, 37 S. Ct. 366, 61 L. Ed. 565; *Union Trust Co. v. Grossman*, (1918) 245 U. S. 412, 38 S. Ct. 147, 62 L. Ed. 368; *Bothwell v. Buckbee, Mears Co.*, (1927) 275 U. S. 274, 48 S. Ct. 124, 72 L. Ed. 277; *Bradford Electric Light Co. v. Clapper*, (1932) 286 U. S. 145, 52 S. Ct. 571, 76 L. Ed. 1026; *Hartford Accident & Indemnity Co. v. Delta & Pine Land Co.*, (1934) 292 U. S. 143, 54 S. Ct. 634, 78 L. Ed. 1178; *Clark v. Williard*, (1935) 294 U. S. 211, 55 S. Ct. 356, 79 L. Ed. 865; see Nussbaum, *Public Policy and the Political Crisis in the Conflict of Laws*, (1940) 49 Yale L. J. 1027.

⁷⁷See note 46 *supra*.

^{77a}The reverse is true when a *judgment* of one state is relied on in the courts of another state. *Williams v. North Carolina*, (U.S. 1942) 63 S. Ct. 207.

⁷⁸*Broderick v. Rosner*, (1935) 294 U. S. 629, 642-3, 55 S. Ct. 589, 79 L. Ed. 1100. Italics added. Accord as to judgments: *Williams v. North Carolina*, (U.S. 1942) 63 S. Ct. 207.

⁷⁹(1933) 290 U. S. 202, 225-6, 54 S. Ct. 181, 78 L. Ed. 269.

to pass upon the sanity of its own residents, notwithstanding the earlier pronouncements of the courts of other states."

The full faith and credit clause applies only to the public acts, records and judicial proceedings of a sister state; due process, on the other hand, forbids the "undue extension" of the forum's own law,⁸⁰ whether statutory or judge-made.⁸¹ The ultimate question, however, is the same, namely, whether the forum constitutionally may decide a given case otherwise than it would be decided in another jurisdiction; and precisely the same test is applied whether one or other of the constitutional provisions is invoked.⁸² Hence it makes little if any practical difference that the out-of-state law relied on by a party is that of a foreign sovereign or the non-statutory law of a sister state, the net result, in that event, being merely that reliance must be placed on the Fourteenth Amendment to the exclusion of the full faith and credit clause.⁸³ Whatever the source and character of the allegedly applicable out-of-state rule, the test is whether the forum has a "domestic interest" or "governmental interest" in the controversy sufficient to warrant decision according to its own "law and policy" to the prejudice of a party contending that decision must conform to what the courts of some other jurisdiction presumably would hold.⁸⁴ The clearest statement of the proposition appears in the *Alaska Packers* case, which involved both due process and full faith and credit, as follows:

⁸⁰*Alaska Packers Assn. v. Industrial Accident Comm.*, (1935) 294 U. S. 532, 540, 55 S. Ct. 518, 79 L. Ed. 1044; *Pink v. A. A. A. Highway Express*, (1941) 314 U. S. 201, 211, 62 S. Ct. 241, 86 L. Ed. 152; see Stone, J., dissenting in *Yarborough v. Yarborough*, (1933) 290 U. S. 202, 219, 54 S. Ct. 181, 78 L. Ed. 269 ("... the Fourteenth Amendment denies to a state the power of unduly extending its authority beyond its own borders, by the mere expedient of rendering a judgment against one of whose person or property it has acquired jurisdiction.")

⁸¹See Carnahan, *Conflict of Laws and Life Insurance Contracts*, (1942) 81-82; Ross, "Full Faith and Credit" in a Federal System, (1936) 20 MINNESOTA LAW REVIEW 140, 180.

⁸²See Carnahan, *Conflict of Laws and Life Insurance Contracts*, (1942) 78-83.

⁸³See Stone, J., dissenting in *Yarborough v. Yarborough*, (1933) 290 U. S. 202, 220, 54 S. Ct. 181, 78 L. Ed. 269 ("Whatever difference there may be between holding that a judgment is invalid under the Fourteenth Amendment because it is 'extra-territorial,' and in holding that it is not entitled to full faith and credit although it does not infringe the Fourteenth Amendment, is one of degree or of a difference in circumstances which may prevent the operation of the latter provision of the Constitution.")

⁸⁴*Hartford Accident & Indemnity Co. v. Delta & Pine Land Co.*, (1934) 292 U. S. 143, 54 S. Ct. 634, 78 L. Ed. 1178; *Alaska Packers Assn. v. Industrial Accident Comm.*, (1935) 294 U. S. 532, 55 S. Ct. 518, 79 L. Ed. 1044; *Pacific Employers Ins. Co. v. Industrial Accident Comm.*, (1939) 306 U. S. 493, 59 S. Ct. 629, 83 L. Ed. 940; *Pink v. A. A. A. Highway Express*, (1941) 314 U. S. 201, 62 S. Ct. 241, 86 L. Ed. 152; *Williams v. North Carolina*, (U.S. 1942) 63 S. Ct. 207; cf. *Osborn v. Ozlin*, (1940) 310 U. S.

"Objections which are founded upon the Fourteenth Amendment must . . . be directed, not to the existence of the power to impose liability for an injury outside state borders, but to the manner of its exercise as being so arbitrary and unreasonable as to amount to a denial of due process.

California . . . had a legitimate public interest in controlling and regulating this employer-employee relationship. . . . Indulging the presumption of constitutionality which attaches to every state statute, we cannot say that this one, as applied, lacks a rational basis or involved any arbitrary or unreasonable exercise of state power.

. . . Appellant contends that . . . the full faith and credit clause . . . compel[s] recognition of the Alaska statute as a defense. . . .

. . . the conflict is to be resolved . . . by appraising the governmental interests of each jurisdiction, and turning the scale of decision according to their weight.

. . . *Prima facie* every state is entitled to enforce in its own courts its own statutes, lawfully enacted. One who challenges that right, because of the force given to a conflicting statute of another state by the full faith and credit clause, assumes the burden of showing, upon some rational basis, that of the conflicting interests involved those of the foreign state are superior to those of the forum. . . .

. . . in the present case, only if it appears that, in the conflict of interests which have found expression in the conflicting statutes, the interest of Alaska is superior to that of California, is there rational basis for denying to the courts of California the right to apply the laws of their own state."⁸⁵

To determine whether the forum's interest is sufficient to warrant decision according to its own law and policy obviously requires an appraisal of competing considerations of policy and a balancing of the respective claims of all interested jurisdictions in light of the factual situation in each case.⁸⁶ Nevertheless categories are

53, 60 S. Ct. 758, 84 L. Ed. 1074; *Hoopston Canning Co. v. Pink*, (U.S. 1943) 63 S. Ct. 602; see Carnahan, *Conflict of Laws and Life Insurance Contracts*, (1942) 78-83; Ross, "Full Faith and Credit" in a Federal System, (1936) 20 MINNESOTA LAW REVIEW 140, 176; Hilpert and Cooley, *The Federal Constitution and the Choice of Law*, (1939) 25 Wash. U. L. Quar. 27, 41, 46, 55-57.

⁸⁵(1935) 294 U. S. 532, 541-3, 544, 547-9, 55 S. Ct. 518; 79 L. Ed. 1044.

⁸⁶*Hartford Accident & Indemnity Co. v. Delta & Pine Land Co.*, (1934) 292 U. S. 143, 54 S. Ct. 634, 78 L. Ed. 1178; *Alaska Packers Assn. v. Industrial Accident Comm.*, (1935) 294 U. S. 532, 55 S. Ct. 518, 79 L. Ed. 1044; see Stone, J., dissenting in *Yarborough v. Yarborough*, (1933) 290 U. S. 202, 215, 219 n. 11, 54 S. Ct. 181, 78 L. Ed. 269 ("In the assertion of rights defined by a judgment of one state, within the territory of another, there is often an inescapable conflict of interest of the two states, and there comes a point beyond which the imposition of the will of one state

already forming to one or other of which, as they are multiplied and defined, each case in its turn will be assigned in the continuing process of assessing and classifying typical fact patterns. Thus the *Griffin* and *Pink* cases made plain that "the interpretation and legal effect of policies of insurance entered into [anywhere] by [a state's inhabitants] . . . who are sued upon them in its courts, are peculiarly matters of local concern."⁸⁷ The earlier *Pacific Employers*⁸⁸ case recognized that a state has the required domestic interest in transactions of non-residents occurring within its borders. As regards the legal relations between corporation and shareholder, on the other hand, the *Pink* case indicates that the interest of the chartering state is paramount,⁸⁹ doubtless because of the confusion and inequity that would ensue if every state were permitted to pass on the internal affairs of every corporation within reach of its process—each according to its own "law and policy."⁹⁰

On the basis of these cases and of *Alaska Packers Assn. v. Industrial Accident Comm.*⁹¹ the general rule may be said to be that, except in respect of questions growing out of the corporate relationship, the forum constitutionally may apply its own rule, whether statutory or not, to any transaction which either takes place within it or affects its residents—with which, in short, it has an "actual contact."^{91a} Doubtless other exceptions and qualifica-

beyond its own borders involves a forbidden infringement of some legitimate domestic interest of the other. That point may vary with the circumstances of the case . . . the appropriate function of this Court [is] balancing the interests of local and foreign sovereign.")

⁸⁷(1941) 314 U. S. 201, 211, 62 S. Ct. 241, 86 L. Ed. 152.

⁸⁸(1939) 306 U. S. 493, 59 S. Ct. 629, 83 L. Ed. 940.

⁸⁹Accord: *Broderick v. Rosner*, (1935) 294 U. S. 629, 55 S. Ct. 589, 79 L. Ed. 1100.

⁹⁰Accord: *Hartford Life Ins. Co. v. Ibs*, (1915) 237 U. S. 662, 35 S. Ct. 692, 59 L. Ed. 1169; *Supreme Council of Royal Arcanum v. Green*, (1915) 237 U. S. 531, 35 S. Ct. 724, 59 L. Ed. 1089. On similar grounds many state courts have denied their "jurisdiction" to interfere with the internal affairs of a foreign corporation; e.g., *Relief Assn. v. Equitable Life Assur. Society*, (1942) 140 Ohio St. 68, 42 N. E. (2d) 653; *Ellis v. Mutual Life Ins. Co.*, (1939) 237 Ala. 492, 187 So. 434. Such cases represent an application of the doctrine of *forum non conveniens*. Blair, *The Doctrine of Forum Non Conveniens in Anglo-American Law*, (1929) 29 Col. L. Rev. 1, 22, 31. To decline or to exercise jurisdiction rests in the sound discretion of the court. *Rogers v. Guaranty Trust Co. of New York*, (1933) 288 U. S. 123, 53 S. Ct. 295, 77 L. Ed. 652, 89 A. L. R. 736; *Travis v. Knox Terpezone Co.*, (1915) 215 N. Y. 259, 109 N. E. 250; *Restatement, Conflict of Laws* (1934) 279, Scope Note. But if jurisdiction be assumed the issues "are to be determined upon the ascertainment and proper application of" the law of the corporate domicile. *Rogers v. Guaranty Trust Co. of New York*, *supra*.

⁹¹(1935) 294 U. S. 532, 55 S. Ct. 518, 79 L. Ed. 1044.

^{91a}Accord: *Hoopston Canning Co. v. Pink*, (U.S. 1943) 63 S. Ct. 602. See *Williams v. North Carolina*, (U.S. 1942) 63 S. Ct. 207, 212 ("Nor is there any authority which lends support to the view that the full faith and

tions will be established but, while the judicial current runs as now, always with reference to the validity and relative weight of the contesting claims put forward in the name of the several jurisdictions concerned. In the last analysis, of course, that is only a variation of the "proper law" theory with the Supreme Court serving as final arbiter.⁹²

As yet unanswered is the question of a state's domestic or governmental interest in transactions occurring elsewhere insofar as they affect only (a) non-residents who have since become residents;⁹³ (b) non-residents temporarily sojourning within it;⁹⁴ (c) non-residents who avail themselves of its hospitality solely to present their claims to the adjudication of its courts.⁹⁵ But it will be difficult to gainsay the conclusion of the New York Court of Appeals that "it cannot be against the public policy of [a] state to hold nationals to the contracts which they have made in their own country to be performed there according to the laws of that country."⁹⁶ That appears as applicable to residents of sister states as to nationals of other countries. Hence something more than an urge to decide imported controversies according to local standards will be required to warrant nullification by the forum of claims recognized elsewhere.

Nevertheless, considering the resurgent view that conflicts questions are merely questions of local common law⁹⁷ and the Supreme Court's evident policy to interfere as little as possible with state courts,⁹⁸ it may be anticipated that, on the whole, constitutional objections to state court determinations of choice-of-law problems will have to fight their way.

credit clause compels the courts of one state to subordinate the local policy of that state, as respects its domiciliaries, to the statutes of any other state.")

⁹²See Cavers, *A Critique of the Choice-of-Law Problem*, (1933) 47 Harv. L. Rev. 173.

⁹³That was the situation in *John Hancock Mut. Life Ins. Co. v. Yates*, (1936) 299 U. S. 178, 57 S. Ct. 129, 81 L. Ed. 106.

⁹⁴Cf. *New York Life Insurance Co. v. Head*, (1914) 234 U. S. 149, 34 S. Ct. 879, 58 L. Ed. 1259; see Nussbaum, *Public Policy and the Political Crisis in the Conflict of Laws*, (1940) 49 Yale L. J. 1027, 1030-32.

⁹⁵See *Hoopeston Canning Co. v. Pink*, (U.S. 1943) 63 S. Ct. 602; Nussbaum, *supra* note 94.

⁹⁶*Dougherty v. Equitable Life Assur. Society*, (1934) 266 N. Y. 71, 90, 193 N. E. 897, 903; *Holzer v. Deutsche Reichbahn-Gesellschaft*, (1938) 277 N. Y. 474, 479, 14 N. E. (2d) 798, 800.

⁹⁷See note 74 *supra*.

⁹⁸*E. g.*, *Toucey v. New York Life Ins. Co.*, (1941) 314 U. S. 118, 62 S. Ct. 139, 86 L. Ed. 100, reh. den. 314 U. S. 585, 62 S. Ct. 294, 86 L. Ed. 473. See the reference by Mr. Justice Jackson concurring in *D'Oench, Duhme & Co. v. Federal Deposit Ins. Co.*, (1942) 315 U. S. 447, 469, n. 7, 62 S. Ct. 676, 86 L. Ed. 956, to "the present tendency to constrict the jurisdiction of federal courts"; *Cohen v. American Window Glass Co.*, (C.C.A. 2nd Cir. 1942) 126 F. (2d) 111, 114.